

14. Article X and Power Plant Siting

Support Article X Process (No response is necessary for this section.)

Senator James W. Wright

The process for siting new generation as outlined in Article X of the Public Service Law has been instrumental in encouraging the construction of efficient and minimally polluting generation. I support reauthorization of Article X and will be examining ways it can be made more responsive to the State's evolving energy needs.

Recommendations for Reform and Improvement to Article X Process

New York City Clergy for Justice Association

We are concerned about the dangers to the health of our community that we reach and we minister to in our pastoral care. We noticed that scientific studies have shown that the PM 2.5 is related to significant health problems. When siting new facilities, the impacts must be minimized and the emissions completely offset or the facility should not be built at all. The study should take into account all existing levels of PM 2.5, the health conditions of nearby residents, the amount of emissions from the facility, and the health conditions in the affected communities. (See Response on page 14-16.)

Better Queens Environment (BOE), Pace University School of Law, Pace Energy Project

BOE recommends the following: The Siting Board should be expanded to include non-Agency members including one independent expert on Environment and Health, one member of the State Assembly, and one member of the State Senate from the district concerned, along with four local residents.

Article X intervenor funds should not be subject to restrictions that prevent their use for legal counsel.

Fast tracking is not a long-term solution and should be phased out, not expanded to include "other public policy goals" apart from "environmental performance standards.

BOE proposes a moratorium on all power plant construction and approval until the New York Metropolitan area is brought into compliance with the Clean Air Act and the Article X process is so constituted that it is able to adequately address issues of health and environmental justice. (See Response on page 14-16.)

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Melanie Golden

The Power Plant siting process in Article X needs serious reform. Article X should include integrated and regional planning similar to the concept in the State's Open Space and Conservation Plan. (See Response on page 14-16.)

The Business Council of New York State, Inc.

In the area of plant siting, the Business Council agrees with the Draft State Energy Plan that Article X of the Public Service Law needs to be extended. The Business Council does not recommend a wholesale revision of Article X, but rather a careful reexamination of the provisions that have caused the most problems in the siting of plants by private developers. Additionally, we believe that Article VII of the Public Service Law must be renewed and, to some degree, improved in order better to foster the development of the State's electricity transmission system. (See Response on page 14-16.)

Honorable Kathryn Ellsworth, Mayor, Village of Montebello

Article X must be amended to allow for the increased intervenor funding overall, more control is required at the local municipal and level when a site proposal is submitted, and improved forums for siting hearings.

Power plants should not be clustered and no power plant should be sited on an aquifer. (See Response on page 14-16.)

Stop the Barge

One of the requirements of the Draft State Energy Plan should be that local suggested zoning plans be respected. Communities should be consulted. (See Response on page 14-16.)

Torne Valley Preservation Association

Article X should be rewritten so that power plant builders are required to show the need and alternate sites for analysis. Local zoning should not be overridden. Community sentiment should be seriously considered. (See Response on page 14-16.)

Honorable Harriet D. Cornell, Rockland County legislator

Article X must be amended to require New York State to adopt a master plan identifying sites that would be appropriate for various types of power plants. The master plan, among many things, should define standards for different types of power plants. (See Response on page 14-16.)

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Pace University School of Law; Pace Energy Project

The State Energy Plan should consider the relationships between and among existing and proposed power plants from an environmental and reliability standpoint. The current Article X process is essentially applicant-driven. This process is not designed to and is not effective at addressing in a comprehensive and broadly participatory fashion New York State's future energy needs. (See Response on page 14-16.)

Honorable Ellen Jaffee, Rockland County legislator

It is imperative that the Energy Plan require that ongoing air monitoring be conducted where power plants are located and where they are proposed.

Article X must be revised to allow for meaningful public input earlier in the process, the use of intervenor funding for legal costs and no waiving of local laws. (See Response on page 14-16.)

Rockland County Conservation Association

An abbreviated Article X process is not commensurate with the resulting impacts to a community. By obviating home-rule local communities are limited in their ability to rebuke the idea of a nuclear facility being built. (See Response on page 14-16.)

League of Women Voters

Article X should be revised so as not to have each application considered in isolation from all others. (See Response on page 14-16.)

New York State Sustainable Energy Coalition (NYS-SEC) et al.; Stop the Barge; New York State Environmental Justice Alliance

The Draft State Energy Plan recommends super fast tracking the approval process for building new power plants on brownfield sites. The Article X process is already so flawed that more fast tracking will only further stifle a community's ability to participate meaningfully in the process. Instead, New York needs to improve public participation in the approval process by, among other things, providing more information to the public during the pre-application process, setting fair and adequate time frames to allow for public review and preparation for hearings, and expanding intervenor funds to include legal representation. (See Response on page 14-16.)

Sierra Club, NYC Group

The statements in the plan about the benefits of Article X to the State totally ignore the concerns of community residents who have been excluded from input into the

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siting of plants in their neighborhoods. Article X appears to have been created to bypass the concerns of communities in which plants are proposed. The siting process should include, at a minimum, the following: needs analysis, health effects assessments, analysis of PM 2.5, an environmental justice analysis, and a well-documented cumulative impacts review. Prior to reauthorization of the law, it should include the elimination of the grandfather clause applicable to plants built before 1977. These plants are the largest stationary sources of pollutants that have been shown to cause, among other things, smog, haze, mercury, acid rain, and contribute to global warming. (See Response on page 14-16.)

Brentwood-Bay Shore Breast Cancer Coalition

In Brentwood, the Pilgrim State Hospital site is becoming a fossil energy farm. Mini power plants are popping up like mushrooms, bypassing environmental review and dismissing consideration of different alternatives. We would like to put the power plants on hold for a year and promote energy efficiency in Brentwood. Conservation measures that require a wide range of skills provide business opportunities and jobs all over Long Island, rather than the short-term construction jobs at a few sites followed by new technical jobs at power plants. (See Response on page 14-16.)

New York Public Interest Research Group (NYPIRG)

With respect to Article X, New York Public Interest Research Group has strong opposition to the following:

- Creating a six-month approval process, or a shortened approval process for brownfields development, or for brownfield sites, would be a major mistake because [1] we are putting one of New York's major sources of pollution, power plants, on already contaminated sites and expediting the process. The State has not dealt with the real issues of brownfield cleanup and liability.
- The approval process should not be shortened. Communities have a hard time keeping up with the one-year schedule. Any further shortening of the process would take away the voice of the public further.
- A further decrease in the threshold for Article X would be a mistake. With the current threshold of 80 megawatts there is a major problem. We now have turbines popping up everywhere that are a lot less efficient than larger facilities. They may be peakers but they are operating on the hottest days of the year which means we're going to have of the worse ozone concentrations.

To improve the Article X process, the following should be recommended:

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- To improve public participation, local officials should appoint members of the siting board.
- Intervenor funds should be expanded and increased and allowed to be used for legal fees.
- The cumulative impact of existing and proposed facilities should be considered. We don't want 500 less efficient facilities when we can have a 1000 megawatts facility that will put out less pollutants, take up less water, and have less of an environmental impact on the community.

(See Response on page 14-16.)

New York Public Interest Research Group, Niagara Chapter

In the Draft State Energy Plan, the State lays out a variety of recommendations for reforming the siting law.

NYPIRG feels that intervenor funding needs to be increased and expanded in two ways. It should be available for legal fees and it should be available through the pre-application process. It is during this time that developers are more willing to make changes to their proposals.

NYPIRG supports the language that would recommend cumulative impact analysis and Environmental Justice analysis. We think this should be expanded to include cumulative public health impacts of the proposed project.

We also support the Energy Plan's language to include PM 2.5 analysis.

NYPIRG feels the siting process should be used for problems with older generation facilities that were built in the 1950s and '60s that are still on line. NYPIRG strongly opposes language that would give priority to brownfield projects if it would mean shortening the siting process.

Mini power plants with less than 88 megawatts should not be exempted from the siting process unless they have a nameplate generation capacity of less than 15 megawatts.

NYPIRG feels the Energy Planning Board should recommend a four pollutant approach to cleaning up existing generators. (See Response on page 14-16.)

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Erin Cala

Environmental justice issues such as siting and cleaning up existing power plants through repowering methods must be considered. Article X should provide compensation for attorney fees so citizens can be fairly represented. (See Response on page 14-16.)

UPROSE

The Energy Plan needs to establish comprehensive cleanup standards for existing facilities. Instead of proposing and building so many new power plants, the plan needs to implement cleaning up the existing facilities in order to protect those who live near the plans.

New York needs to expand the intervenor funding to include some legal fees.

The draft plan and the Article X process do not facilitate public participation and limits community empowerment and must be reformed to include complete and serious community consultation. It must set fair time lines that are adequate for community groups to properly review documents.

We filed a lawsuit against New York Power Authority for building these power plants in our communities of color. They didn't do any community consultation and no environment impact studies.

Fast tracking the approval process for these facilities would seriously strangle the community's ability to participate. (See Response on page 14-16.)

North Fork Environmental Council

On page 1-30, in points 2 and 4, the Plan talks about expediting procedures for building new facilities. Our organization does not agree with that. In this case, streamlining review is not even a euphemism. It really belies the purpose of what we want to do. You can't streamline in this case. You'll be eliminating review. (See Response on page 14-16.)

Sierra Club, Long Island Group

Sierra Club Long Island urges the reform of Article X. The siting process should include environmental justice analysis, an analysis of fine particulate effects, the assessment of health effects, and a needs analysis. It should allow for earlier public input and not waive local laws. Reauthorization of the siting law should be linked to clean up of existing old grandfathered plants. We need to integrate decision making into the Draft

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State Energy Plan, and that means we don't want power plants built in areas that were already designated for open space or over a major water aquifer. (See Response on page 14-16.)

Pace University School of Law; Pace Energy Project; Wedlyne Guerrier

Essential changes to the State Energy Plan should include reestablishment of the “needs” determination as a fundamental element in demonstrating that a proposed project is in the public interest. The Article X process should be structured to allow decision makers to take a hard look at how a proposed generation facility fits into the existing and planned gas and electric transmission infrastructure rather than simply deferring to the judgement of the market participants. (See Response on page 14-16.)

Environmental Advocates of New York

Article X needs to be reformed. Article X leaves significant things out. One thing is Environmental Justice analysis. Also lacking is an analysis of fine particulate matter, an assessment of health effects, and a needs assessment.

Article X should allow the use of intervenor funds for legal costs. (See Response on page 14-16.)

New York Public Interest Research Group

In the Energy Plan, I don't recall seeing a section that talked about the declaration of need and how the declaration of need has changed from a more regulated monopoly to this deregulated, restructured market. There obviously has been a change in the definition of need. I think we should still be doing an old style declaration of need, particularly in the siting process.

In the declaration of need process, we should go beyond statewide to looking at different load pockets and having regional public input. So there is regional coordinating on this issue before we have to deal with siting of a power plant. So to restructure the old declaration of need and to reinstate it in the context of regional analyses of the load pocket.

That's obviously a huge issue in the New York Metropolitan area where the closeness of demand to supply led to huge price spikes and large concern over blackouts or brownouts in New York City. The blackouts and brownouts were avoided, the price spikes were not. (See Response on page 14-16.)

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Star Foundation

With respect to the Article X process, the Draft State Energy Plan states that the Article X has benefitted the State and provided environmental protection. On Long Island we have a sole source aquifer that is very important to Long Island. For an Article X Siting Board to be able to come down and just ignore local regulations and local government is just plain wrong. Moreover, we think there should be a required demonstration of need in that process. (See Response on page 14-16.)

East River Environmental Coalition

The Lower East Side Community has been participating in the Article X process for the last two years.

- There is no way we were able to participate meaningfully in this process without legal representation.
- Our funding did not allow our studies to be extensive. We did not have time to do the kind of studies that would stand up against Con Edison's studies, when they had years and years to present them.
- We tried and failed to work with State agencies to gain mitigations by cleaning up the existing power plant before siting the new one, but Article X does not provide for this. This needs to be changed.
- We need to be allowed to present testimony on cumulative effects to show the real health impacts on our community.

We need funding for legal representation and time and funding for meaningful studies. (See Response on page 14-16.)

Environmental Advocates

Environmental Advocates is hoping that the final version of the Energy Plan will have specific recommendations on a wide range of issues but specifically that you'll consider some of the frustrations of community residents who face power plant proposals in their communities. (See Response on page 14-16.)

North Fork Environmental Council

With respect to Article X, we have found that, even if we choose not to fight the plant that is proposed for our neighborhood, just to work with the other parties in the siting process is going to cost us tens of thousands of dollars in legal fees that we don't have. Our community has found it almost impossible to have an effective voice in the energy development process once it has begun. We look to this Draft State Energy Plan to work on Article X and make some changes. Intervenor funds needs to be expanded for legal assistance and not just for technical assistance. Funds must be available during the

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pre-application phase when there's still room for changes. The Article X process should not be expedited. It's fast as it is. (See Response on page 14-16.)

Better Queens Environment (BOE)

Decision making regarding both the Draft State Energy Plan and the actual siting of power plants in our city is controlled by administrative personnel, some appointed by the Governor. Elected representatives, except to be participants in the hearing, are excluded and have no input into the work of the agencies and commissions. Although we are dealing with public utilities, public citizens do not really have a say. (See Response on page 14-16.)

Sustainable Energy Alliance of Long Island

Article X is deficient in several glaring respects—

- The power to supercede local rulings and regulations is unacceptable. For example, a local law to protect the sole source of drinking water may be bypassed.
- Article X doesn't provide for regional overview. Also, a power plant sited to increase competition may economically damage the region by not allowing other industries nearby because the PSC allowances are used up by that power plant. Do possible marginal rate decreases outweigh fewer businesses, higher unemployment, and arrested development in an area near a power plant?
- Allowance is not made for existing environmental problems, such as being a designated non-attainment region. The Energy Master Plan should accommodate health compromised regions such as Long Island, by specifying only suitably sited new generations that would meet the region's electrical needs, not excess generation.
- The Siting Board could be skewed to approving them.
- The two ad hoc locals on the Siting Board are chosen by the County Executive and can be political appointees so their objectivity may be in question.
- The Governor appoints all members of the Siting Board.
- The time allotted for public input and comments is too short.
- The time allotted for Siting Board decisions is too short.
- Intervenor funds must be available for studies before signing off on stipulations.
- No mention is made of the Long Island Power Authority, a State entity, being used as an adjunct to the PSC in the Draft Master Plan. LIPA is uniquely qualified to determine power plant need and siting on Long Island. It is familiar with the complex issues and local laws. Section 1020G of the LIPA Act specifies what criteria are for power plant siting

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and emphasizes renewables, energy conservation, state-of-the-art and new technologies. Serious consideration should be given to incorporating this section into the Draft State Energy Plan.

(See Response on page 14-16.)

New York Public Interest Research Group

Right now the Draft State Energy Plan fast-tracks the approval process for building new power plants on brownfields. While this is a good idea, New York needs to improve public participation by expanding the intervenor funds to include legal representation so that the communities could be better represented when a power plant is proposed in their area. There are more than twenty new proposals for preliminary scoping here on Long Island that LIPA is currently pushing through. And this is just a horrible situation where you continue to have the community at the mercy of a public power authority that's supposed to answer to the people and currently doesn't. (See Response on page 14-16.)

Fred Elmer

Article X of the Public Service Law should be changed as follows: The siting process needs to allow for public input and assessment of health hazards and an environmental justice analysis. Reauthorization should be linked to cleaning up older grandfathered power plants that were built before 1977 and which now violate the clean air standards. Cleanup should result in reduction of sulfur dioxide approximately 50 percent, nitrogen oxides about 50 percent, and caps for the carbon dioxide emissions. (See Response on page 14-16.)

Independent Power Producers of New York, Inc. (IPPNY)

The State Energy Plan should unequivocally endorse the Article X power plant siting process. The siting process should be renewed and could be improved. The siting board and agencies involved should:

- Tighten the hearing and permitting schedules.
- Shorten the overall power plant approval time frame.
- Shorten the approval time frame for any development project reusing an industrial site.

The State Energy Plan should remind policy makers that the goal of Article X is to efficiently site new generation in the state, not to discourage the siting of new generation. (See Response on page 14-16.)

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Moratorium on Power Plant Siting

Sierra Club, NYC Group

No new power plants should be built until the other recommendations of the Sierra Club, NYC Group, are implemented. This should become a fundamental part of the State Energy Plan. No repowering projects should be permitted unless they substantially reduce pollution and mandate the use of new technologies that will reduce the overall pollutant levels. (See Response on page 14-16.)

Riverkeeper, Inc.

The State Energy Plan should promote the siting of new electricity generation capacity only where the replacement of older destructive technologies is guaranteed. (See Response on page 14-16.)

New York City Environmental Justice Alliance

The Alliance would like to see a moratorium on power plant siting except for repowering projects until the recommendations [in the Energy Plan] relating to the electricity sector are implemented, including the form of power plant siting, clean up of existing plants, investment in efficiency and new technologies, and implementation of renewable energy technologies through the Renewable Portfolio Standard. There should be a moratorium unless the project will result in a direct reduction of overall pollution due to the repowering of an older plant with new technologies or fuel switching. Construction of new plants has a long-term effect on New York's electricity sector and should only be done in the context of an overall balanced energy plan.

The State Energy Plan should address how reform of siting procedures should take place. Reform should fast track good plans for repowering, fast track clean renewable technologies – not burned-garbage waste plants, good wind power, photovoltaics, biomass, that type of thing. (See Response on page 14-16.)

Consumers Union

The State should evaluate the need for public power plants. (See Response on page 14-16.)

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Against Grandfathering Older Plants

Environmental Advocates of New York

Older plants should not be grandfathered. The siting law should be linked to clean up of existing older plants that avoid current emission standards. These old polluting plants should be required to clean up using a four pollutant approach to reduce sulfur dioxide by 75 percent, NOx by 50 percent, mercury by 90 percent, and place caps on carbon dioxide emissions. (See Response on page 14-16.)

Annie Wilson Miquet

A mechanism could and should be the decommissioning of the grandfathered power plants. I would suggest that any new power plant proposals would be prohibited unless they are a true repowering of an existing facility. (See Response on page 14-16.)

General Siting Issues

Consolidated Edison Company of New York

The parallel tracks of the siting board review and the DEC permit review remain confusing and unwieldy and provide increased opportunity for delays and uncertainty. Con Edison thinks there ought to be better coordination between the siting board and the DEC permit review process and we urge the Draft State Energy Plan to consider this. (See Response on page 14-16.)

A.E.S. Ltd.

We should work prudently to ensure that New York continues to meet its energy needs using generating facilities that are located in and pay taxes in New York. (See Response on page 14-16.)

Innovative Energy Systems (IES)

IES wants emphasized in the Energy Plan the regional aspects of energy policy in New York. In developing an energy policy, a lot of generation should not be sited and provided with incentives for siting in the western part of the State. IES' concern is that, in the absence of new transmission resources, power generated in the western part of the State will only add to the increased capacity in the western part of the State and not satisfy capacity needs in the eastern part of the state. (See Response on page 14-16.)

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Streamline the Article X Siting Process

Mirant New York, Inc.

The State must streamline and expedite its siting processes and remove government imposed obstacles in order to facilitate the building of new energy infrastructure including additional generating plants and natural gas pipelines while retaining existing low cost generating facilities.

It is not enough for the Draft State Energy Plan to recommend renewal of the current Article X siting law. It must advocate for an improved and expedited process. The purpose of the Article X law was to facilitate the siting of electric generation, not to be a vehicle for those who would oppose it.

The State Energy Plan should contain recommendations to enhance, streamline, and facilitate the implementation of the Article X and Article VII siting laws. The Energy Planning Board may wish to consider any or all of the following:

- Better coordination with federal agencies
- Accommodation and expedition of the siting of new and expanded facilities where the level of net air emissions upon completion of the project would be the same or lower than current levels
- Reallocation or dedication of current State agency staff to assist the Siting Board
- Reduction or elimination of intervenor funding, the availability of which may inadvertently delay opportunities to expedite the siting process
- Combining Article X and VII processes.

(See Response on page 14-16.)

Environmental Energy Alliance of New York

Absent from discussion in the Energy Plan is the Article VII transmission line licensing process. The Plan should include an objective to develop a method where State and federal regulators would coordinate more closely to ensure that approvals of Article VII and Article X licensing projects are completed in parallel among all agencies. (See Response on page 14-16.)

Multiple Intervenors

The Article X process must be expedited. Load must be allowed to participate in wholesale markets. Barriers to distributed generation and co-generation facilities must be eliminated.

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The State Energy Plan must include recommendations that ensure a secure supply of energy. The Article X siting process must be expedited. (See Response on page 14-16.)

New York State Electric and Gas (NYSEG)

NYSEG suggests streamlining the siting and approval process for electric generating plants, adding to the State's electric transmission capacity, and the creation of a Regional Transmission Organization that includes the New England, New York, and Pennsylvania-New Jersey-Maryland ISOs. (See Response on page 14-16.)

New York Public Interest Research Group (NYPIRG)

NYPIRG fully supports the six-month approval process for repowering projects. Repowering is really the way that New York State should be going as far as meeting its energy needs. In true repowering, we are decreasing emissions, increasing output, and decreasing the amount of water facilities use. (See Response on page 14-16.)

Niagara Mohawk Power Corporation

The draft Energy Plan correctly notes that the Article X process has been a useful tool for review of proposed new generating facilities and points out that the process should be enhanced to enable it to conclude more rapidly. The Article VII process, by which major electric and gas transmission facilities are certified, would also benefit from some improvement. When new generating facilities are proposed, better coordination of the Article VII and Article X processes would be beneficial. Since federal permits often delay construction, improved coordination between State and federal regulators during the siting and permitting processes would also be worthwhile. (See Response on page 14-16.)

Key Span

Under Article X, we applaud the initiatives for repowering opportunities, but we think a hard look should be taken at brownfield opportunities, where generation can actually be undertaken on brownfield sites. Key Span, of course, is a very large property owner in the New York City and Long Island areas, and brownfields are a very important issue for those regions. Certain generation opportunities at brownfield sites should get preferential treatment on some expedited basis. (See Response on page 14-16.)

New York Independent System Operator (NYISO)

To allow Article X to lapse or to install a radically different regulatory process for siting new generation would be devastating at this time.

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The NYISO makes the following specific recommendations on how the Article X process can be improved: (a) Once an application has been certified, shorten the time frame for approval from 12 months to 6 months or less. (b) further streamlining the process for power plant developers building on “brownfields” (*i.e.*, existing industrial use sites) while remaining cognizant of the need to continue developing greenfield sites. (See Response on page 14-16.)

The Manufacturers Associations of Central New York and the Greater Syracuse Chamber of Commerce

Competitively priced and reliable energy is paramount to the success of businesses here in central New York and across the State. New York needs more capacity to increase competition, to keep prices down, and to successfully position our businesses for growth. We recommend improving the Article X siting process. New York State must continue to make adjustments to streamline this bureaucratic process to ensure the development of a more competitive wholesale electric market. (See Response on page 14-16.)

Sunset Article X

Roger Downs

I think only one person has come forward and said that Article X should sunset in 2002 and I thought I would come and make that two people.

I think that amendments [to Article X] are unnecessary. I think every applicant can have a fast track if they are choosing a good site. I think the Athens plant took three years to permit because it was a pathetic site.

I would like to offer a power plant beauty contest. I would like to see them compared using certain criteria such as repowering, brownfields, historic site, environmental impact, and Environmental Justice issues. (See Response on page 14-16.)

Sustainable Energy Alliance, Suffolk County Electrical Agency, Long Island Coalition for Democracy

No extension of Article X. It should sunset. It's already damaged a number of communities and been highly costly in terms of forcing municipalities to determine to challenge them. It seems we should go back to the old methods and require all generating plant companies to be forced to comply with full SEQRA from the very beginning. (See Response on page 14-16.)

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Mini Power Plants

New York Public Interest Research Group

We believe that eighty megawatts is too high. The original number we would start off with is fifteen megawatts. (See Response on page 14-16.)

Pace University School of Law; Pace Energy Project

An essential changes in the Article X process should include lowering the generation capacity threshold for Article X applicability. Article X applicability should be based on a proposed plant's nameplate capacity. (See Response on page 14-16.)

Stop the Barge

A major flaw of the Article X process is the wiggle room that allows the power development entities to use the law to their own advantage. The 79.9 vs. the 80 megawatts issue is absurd. There is no reason to assess the megawatt capability of a turbine that is capable of producing far more than 80 megawatts at an arbitrarily low megawattage to satisfy the SEQRA/Article X division. The entire regulatory agenda vis-à-vis chemical emissions is the ceiling, the potential to emit, not an arbitrary number of tons per year that the company wishes to be held responsible for to meet an application ceiling. Why is that no the regulatory mandate of the energy industry?

PM 2.5 is a huge issue in our community because of the heavy asthma burden. While our community does have several monitors to measure PM 2.5, we are not satisfied that generic 2.5 monitors provide the basis for the modeling that will be used to determine our futures. Even if five months of on-site monitoring is not the U.S. EPA protocol, we would like it to become a format standard for the Article X process.

Response: In the State Energy Plan, the Energy Planning Board endorses reauthorization of the Article X Power Plant Siting Law, and it recommends that the Legislature give consideration to modifications that would streamline the process while continuing public participation. The Board recognizes that decisions concerning any extension of Article X are legislative prerogatives and, as such, the parties' recommendations concerning modifications are available for review by the Legislature. The comments from the parties are numerous, covering many areas of the Article X process.

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Non-Article X Issues – NYPA and LIPA

Independent Power Producers of New York, Inc. (IPPNY)

The New York Power Authority should not continue to insert itself into the competitive electricity marketplace. When New York City faced a severe supply shortage, rather than allowing or encouraging the competitive market to solve the problem, NYPA went forward with the turbine project. NYPA should be required to divest those units as soon as possible.

Response: The units installed by the New York Power Authority (NYPA) were crucial for maintaining a reliable electric system during summer 2001, and they will continue to be crucial for the next several years. When the decision had to be made concerning these units, the competitive market had not been established to the degree necessary to allow the forces of competition to control. As the competitive market and new programs for demand reduction mature over the next few years, the need for market interventions should decline. The ability of NYPA to intervene when necessary is an important asset for New York State.

New York State Sustainable Energy Coalition (NYS-SEC) et al.

The Draft State Energy Plan encourages the New York Power Authority and the Long Island Power Authority to rely more on so-called mini-power plants which do not have to go through the formal approval process, particularly in the New York City Metropolitan area. It must be recognized that these smaller power plants have significant environmental and health impacts on a community and, in almost all cases, are targeted for low-income communities of color.

Response: The Energy Plan does not encourage New York Power Authority and Long Island Power Authority to rely on mini-power plants. The Plan acknowledges the existence and benefits of such facilities and discusses efforts under way to construct several additional facilities to meet system needs. The output from these facilities is essential at least until new base-load generation, transmission interconnection, and effective load-reduction measures are available. The State, especially in the New York City and Long Island areas, needs additional resources of supply and demand reduction; the NYPA and LIPA facilities are meeting those needs.

Note: Comments are grouped according to similarity of contents, and a response may address more than one comment. In those cases, the response is placed at the end of the series of comments. Long series of comments will include a page reference to the response.

Jesse Moore

Our community, which is Williamsburg, has a number of power plants and a new one which was built by the New York Power Authority last year. The speed with which the plants were sited that the NYPA built last year really prevented the community effectively from involving itself in the process.

Assemblyman Felix W. Ortiz

Assemblyman Ortiz is from the Sunset Park area of Brooklyn. He submitted both oral and written statements regarding their problems with New York Power Authority. "NYPA has made itself an unwanted neighbor in our community . . . they ignored pre-existing health concerns in our community, produced an inadequate Environmental Impact Statement, and have shown consistent reluctance in working with our community.

New York Public Interest Research Group (NYPIRG)

New York should not move forward with the building of new facilities until there's an adequate plan in place, especially with the proposed building of ten new turbine generators here on Long Island. These generators completely circumvent the Article X process by siting two plants on some sites that are designated for 80 megawatts. This problem is going to continue unless there is a plan that specifies specific actions that Long Island Power Authority has to adhere to, and currently they do not have to adhere to the Energy Plan.

Ann Link

With reference to page 2-8 of the Draft State Energy Plan, mini power plants in New York City should not be exempt from the Article X process. These plants can have very negative consequences for concentrated populations from increased pollution, noise, and traffic.

Response: The small units installed or being installed by NYPA and LIPA, while not subject to Article X of the Public Service Law, were required to meet applicable State and local requirements, and public comments were solicited as required. The Energy Plan is not the proper forum to review the siting decisions made for such facilities.

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Parks, Recreation and Historic Preservation

New York State Office of Parks, Recreation and Historic Preservation

The State Energy Plan calls for State Parks to become a statutory party in every certification process under Article X of the Public Service Law (PSL). The State Energy Plan indicates that statutory parties to the certification process are required to submit expert testimony if they determine that a proposed facility impacts a resource under their jurisdiction. This is inaccurate. Section 166 of the PSL only requires that Department of Environmental Conservation and Department of Public Service staff participate in the certification process. No such requirement is placed on other statutory parties contained in that section including the departments of Agriculture and Markets, Health, and Economic Development and New York NYSEDA. In cases where a federal permit is necessary, §14.09 requires that the Commissioner issue an impact determination in the context of §106 and the federal historic preservation review process. To the extent that the Commissioner can consult with State agencies to the certification process she has done so and will continue to do so, but should not be called upon to offer testimony in the State process. The benefit however to listing State Parks as a statutory partner under Article X is that it will receive notification of proposed facilities and will receive documentation in a timely manner.

Response: The State Energy Plan has been modified to reflect the correct language.

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